



[Docket No. FR-6334-N-01]

Proposed Changes to the Methodology Used for Calculating Fair Market Rents

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of proposed changes for calculating Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. The primary uses of FMRs are to determine payment standards for the Housing Choice Voucher (HCV) program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy Program, and to serve as rent ceilings for rental units in both the HOME Investment Partnerships Program and the Emergency Solutions Grants Program and a primary rent standard option for the Housing for Opportunities for Persons With AIDS (HOPWA) program. HUD also uses FMRs in the calculation of maximum award amounts for Continuum of Care grantees and in the calculation of flat rents for Public Housing units. In furtherance of that effort, HUD proposes changes in how FMRs are calculated in this notice and seeks public comment on the proposed changes.

DATES: Comment Due Date: **[Insert date 30 days after the date of publication in the Federal Register]**.

ADDRESSES: HUD invites interested persons to submit comments regarding the proposed changes to the calculation of the FMRs to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the “Request for Comments” section.

There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all Federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications regarding this notice submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (toll-free number). Copies of all

comments submitted are available for inspection and downloading at

<http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Questions on this notice may be addressed to Adam Bibler, Director, Program Parameters and Research Division, Office of Economic Affairs, Office of Policy Development and Research, HUD Headquarters, 451 7th Street SW, Room 8208, Washington, DC 20410, telephone number (202)-402-6057; or via email at pprd@hud.gov. Persons with hearing or speech impairments may access HUD numbers through TTY by calling the Federal Relay Service at 800-877-8339 (toll-free number). This Federal Register notice will be available electronically from the HUD User page at <https://www.huduser.gov/portal/datasets/fmr.html>. Federal Register notices also are available electronically from <https://www.federalregister.gov>.

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the Housing Choice Voucher (HCV) program, the FMR is the basis for determining the “payment standard amount” used to calculate the maximum monthly subsidy for an assisted family. See 24 CFR 982.503. HUD also uses the FMRs to determine initial renewal rents for some expiring project-based Section 8 contracts, initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, rent ceilings for rental units in both the HOME Investment Partnerships program and the Emergency Solution Grants program, the primary rent standard for the HOPWA program, calculation of maximum award amounts for Continuum of Care recipients and the maximum amount of rent a recipient may pay for property leased with Continuum of Care funds, and calculation of flat rents in Public Housing units. In general, the FMR for an area is the amount that a tenant would need to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable

amenities. HUD's FMR calculations represent HUD's best effort to estimate the 40th percentile gross rent¹ paid by recent movers into standard quality units in each FMR area. In addition, all rents subsidized under the HCV program must meet reasonable rent standards.

Since FY 2008, HUD has used data from the Census Bureau's 1-year American Community Survey as the source for estimates of 40th percentile gross rents paid by recent movers, which is often the most accurate and comprehensive reflection of rents available at the local level. On July 29, 2021, the Census Bureau announced that it would not release standard 1-year estimates from the 2020 American Community Survey (ACS) because of the impacts of the COVID-19 pandemic on data collection.² Given this exceptional circumstance, HUD is reconsidering its data sources used to estimate Fair Market Rents, which are required to be statistically valid, and balance timeliness, accuracy, transparency and soundness of approach. According to numerous private-sector rent sources³, rents have been rising rapidly in many markets since 2020. The methods used to estimate rent inflation in the CPI result in delayed measurement of rent increases among recent movers, and local CPI data are only available for 21 large metropolitan areas, so HUD relies on Regional CPI data. While private rent data provides more timely and more geographically specific updates of rent trends than does CPI, the nature of the proprietary data does not allow HUD the same level of visibility into its soundness of methodology and samples as CPI. This Notice describes proposed changes in HUD's methodology for calculating Fair Market Rents that HUD is considering in response to the change in 2020 ACS data availability and local rent increases that are not fully captured by Regional CPI data. Both of these changes will apply only to FY 2023 FMRs.

¹ HUD also calculates and posts 50th percentile rent estimates for the purposes of Success Rate Payment Standards as defined at 24 CFR 982.503(e) (estimates available at: <https://www.huduser.gov/portal/datasets/50per.html>).

² See: <https://www.census.gov/newsroom/press-releases/2021/changes-2020-ac-1-year.html>.

³ Private sources examined by HUD are: RealPage (formerly Axiometrics) average effective rent per unit, Moody's Analytics REIS average gross revenue per unit, CoStar Group average effective rent, CoreLogic, Inc. single-family combined 3-bedroom rent index, ApartmentList Rent Estimates, and Zillow Observed Rent Index.

II. FMR Calculation Methodology Changes

A. Current Methodology

HUD's current methodology for calculating FMRs consists of several steps (see: https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/select_Geography.odn for the calculations underlying each FY 2022 FMR).

1. *Base Rent*. First, HUD establishes a “base rent” for two-bedroom units from the 5-year 40th percentile estimates of gross rent from the ACS.

2. *Recent Mover Adjustments*. HUD then adjusts the base rent using a “recent mover adjustment factor” that is based on the ratio of the estimate of gross rent paid by recent movers from the 1-year ACS to the estimate of gross rent paid by all renters from the 5-year ACS for the smallest level of geography containing the FMR area that contains statistically reliable 1-year data.

The results of these two steps are estimates of 40th percentile rents for recent movers in two-bedroom units that are “as of” the current ACS year.

3. *Inflation*. HUD then accounts for inflation from the ACS year by applying a “gross rent adjustment factor” which is calculated from the Consumer Price Index (CPI) as produced by the Bureau of Labor Statistics (BLS).

4. *Trend Factor*. Because it calculates FMRs ahead of each fiscal year, HUD provides a further inflation adjustment in the form of a “trend factor.” The trend factor represents the expected future level of the gross rent CPI for the upcoming fiscal year compared to the most recent actual gross rent CPI.

5. *State minimum FMRS*. Additionally, HUD calculates state minimum FMRs based on the median FMR for non-metropolitan portions of each state.

6. *Bedroom Ratios*. HUD calculates FMRs for unit sizes other than two bedrooms by applying “bedroom ratios” calculated from the relationships between rents for units of different sizes according to the 5-year ACS.

7. *Limit on Decreases.* Finally, HUD does not allow an area's FMR to decline by more than 10 percent.

Under its current methodology, HUD would calculate FY 2023 FMRs based on data from the 2020 American Community Survey. On July 29, 2021 the Census Bureau announced that it would not release standard 1-year estimates from the 2020 ACS because of the impacts of the COVID-19 pandemic on data collection. The Census Bureau found that the standard 2020 ACS 1-year estimates did not meet the Census Bureau's Statistical Data Quality Standards designed to ensure the utility, objectivity and integrity of the statistical information. Without the 1-year ACS estimates, HUD cannot calculate the "recent mover adjustment factors" in an identical manner as described above.

B. Proposed Changes

HUD is proposing two material changes to the calculation of FMRs for FY 2023 to: (1) deal with the temporary lack of availability of 2020 ACS 1-year data; and (2) provide additional local rent inflation data that better conform FMR estimates to changes in rental markets in the wake of the COVID-19 pandemic. Both proposed changes could narrowly introduce private sector rental data from multiple sources into the FMR calculation process in limited and statistically valid situations where private sector rental data have demonstrated that they more accurately estimate changes in rental markets. These changes would apply only to FY 2023 FMRs.

While these private sector data sources do not cover the entire U.S., may not be individually representative of the rental market, and cannot be used to directly compute FMRs, they may be useful for discrete components of the calculation to inflate ACS data from the collection timeframe to the applicable period of FMRs. For FY 2023 FMRs, HUD is proposing the use of up to 6 private sector rent data sources (RealPage (formerly Axiometrics) average effective rent per unit, Moody's Analytics REIS average gross revenue per unit, CoStar Group average effective rent, CoreLogic, Inc. single-family combined 3-bedroom rent index,

ApartmentList Rent Estimates, and Zillow Observed Rent Index.) where available and would only use private sector rent data where there are at least 3 sources covering the FMR area. The specific private data sources HUD uses in estimating each fiscal year's FMRs would be published as part of the notice announcing availability of the FMRs and in HUD's FMR documentation system.

C. Replacing 2020 ACS 1-year Data

To replace missing 2020 ACS 1-year rent data, HUD proposes a 4-prong approach. While Census will not provide 1-year tabulations of 2020 ACS data at the FMR-area level, Census does provide a special tabulation of the 5-year ACS data for 2020 of the rents paid for standard quality units by persons who moved into their units in 2019 and 2020 and responded to the 2019 or 2020 ACS surveys. This differs from the usual recent mover tabulation of 1-year ACS data as in the regular tabulation, in which all respondents come from a single ACS year and are included if they had moved into their unit during the prior 2 years. While the 40th percentile rents estimated from these 2 samples are similar, the estimates from the 5-year ACS sample tend to be slightly lower than those from the usual 1-year tabulations.

To correct for the tendency for the recent mover estimate derived from ACS 5-year data to be lower than that derived from ACS one-year data, as well as any error that may be introduced by relying heavily on the part of the 5-year ACS collected in 2020, HUD may incorporate private data sources into the methodology in limited situations. For example, in areas where private sources of rental data provide sufficient coverage (3 or more sources) and where the private sources more accurately track changes in certain types of rental markets than CPI, HUD proposes to estimate recent mover rents by taking an average of 2019 ACS recent mover rent inflated by 2019-2020 gross rent change, as calculated from private sources of rent data, and 2020 5-year ACS recent mover rent.⁴ For areas without private data coverage, HUD

⁴ In evaluating the ACS 2020 5-year recent mover estimates, HUD will continue to use the same measure of statistical reliability that it has used in the past – namely, that the ACS estimate must be based on at least 100

proposes to use an average of 2019 ACS recent mover rent inflated by the 2019-2020 gross rent CPI change and 2020 ACS recent mover rent. HUD welcomes public comment on proposals and related analysis to modify available ACS and CPI with private data to replace the 2020 ACS 1-year recent mover rent.

HUD would revert to past practice of using recent mover rent estimates from 1-year ACS tabulations when they are once again made available by the Census Bureau.

D. Using Private Sector Rent Data to Update Rent Estimates

HUD ordinarily updates the latest ACS-based rent estimates with one year of gross rent inflation measured with the 24 local and 4 regional CPI components rent of primary residence and household fuels and utilities depending on the location of the FMR area. The proposed change augments the CPI methodology by including available private data sources along with CPI data in calculating an average gross rent inflation factor in limited situations. For example, in areas without BLS metro CPI data, but a sufficient number of private sector data sources (at least 3), the calculation of the average gross rent inflation factor would include the average change in private rent data along with regional CPI data. In areas covered by BLS metropolitan CPI data, HUD proposes to implement one of the two following possibilities and seeks public comment on each: (1) keeping the actual inflation adjustment unchanged from FY 2022 (i.e., based on metropolitan CPI data), or (2) calculating the inflation adjustment as the average of changes in rents from all available private data sources for the area and the change in rents measured by the metropolitan CPI. In places without sufficient private rent data sources, the actual inflation adjustment process using regional CPI data is unchanged from FY 2022 and prior FMR vintages. In all cases, rent change information is blended with CPI fuels and utilities changes to estimate changes in gross rents.

unweighted survey cases and have a margin of error that is less than half the size of the estimate. For areas that had a useable 2019 recent mover rent at the “local” level – either a HUD metropolitan fair market rent area or metropolitan statistical area – HUD will use the inflated local 2019 recent mover estimate rather than a state-based 2020 ACS recent mover estimate.

This proposed change would provide more measures of local rent inflation than are possible using the BLS regional CPI data, while better conforming FMR estimates to changes in rental markets in the wake of the COVID-19 pandemic. As with the proposed replacement of the 2020 ACS 1-year data, HUD welcomes public comment on proposals and related analysis to modify available ACS data and CPI data with private data and use of private data in FMR areas covered by metropolitan CPI data.

E. Aspects of FMR Methodology Not Proposed to be Changed by This Notice

HUD is not proposing any additional changes to the FMR calculation, meaning it would still use the 5-year ACS data to establish the base rent, and use forecasts of gross rent CPI as the trend factor. Similarly, the “bedroom ratio” methodology used to produce FMRs for unit sizes other than two bedrooms would remain unchanged.

F. Small Area Fair Market Rents

HUD calculates FMRs for metropolitan areas, which comprise one or more counties (or towns, in the case of New England), and single, non-metropolitan counties. Within metropolitan areas, HUD also publishes Small Area FMRs, which are delineated by ZIP code and are required for use in the Housing Choice Voucher program in certain metropolitan areas. The proposed changes to FMR calculation would affect Small Area Fair Market Rents (SAFMRs) as well.

Under its current SAFMR methodology, HUD calculates the SAFMR for areas with a statistically reliable ZIP Code-level base rent for 1-, 2-, or 3-bedroom units by adjusting the base rent with the recent mover adjustment factor and gross rent adjustment factor. Therefore, changes to those factors as described above would apply to SAFMRs as well. For areas without statistically reliable 1-, 2-, or 3-bedroom rent estimates, HUD calculates the SAFMR using the ratio of the all-bedroom ZIP Code median rent (or the median rent for the larger county containing the ZIP Code) to the median rent for the FMR area, then multiplies this ratio by the metropolitan area FMR. The proposed changes, by affecting the metropolitan FMR, would affect this step as well.

III. Request for Public Comment on Changes

HUD is requesting public comment on the proposed changes to the FMR calculation methodology. HUD seeks comment on the general appropriateness of using private sector data in the computation of FMRs as well as comments on the appropriateness of each of the specific data sources HUD is proposing to include (RealPage (formerly Axiometrics) average effective rent per unit, Moody's Analytics REIS average gross revenue per unit, CoStar Group average effective rent, CoreLogic, Inc. single-family combined 3-bedroom rent index, ApartmentList Rent Estimates, and Zillow Observed Rent Index). HUD also seeks comments about any other data sources that may be appropriate for use in computing FMRs. Commenters are asked to consider that the change in inflation adjustment described in Section D above would mean that FMRs may be higher in areas with faster rent growth than their respective regions, but lower in other areas where this is not the case. Additionally, commenters should consider that the private sources of rent data may introduce more volatility in year-to-year changes in FMRs and the extent to which this could impact HUD program operations. The public is also asked to comment on whether HUD should continue use of private rent data in FMRs after FY 2023.

IV. Environmental Impact

This notice proposes changes in the way FMRs are calculated. The establishment and review of Fair Market Rent schedules does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

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of Policy Development and Research.

